



Council Communication

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: TOM CONDIT, P.E., DEVELOPMENT ENGINEER, 480-503-6815

THROUGH: MIKE GILLESPIE, P.E., TOWN ENGINEER
KYLE MIERAS, DEVELOPMENT SERVICES DIRECTOR
MARC SKOCYPEC, DEPUTY TOWN MANAGER

MEETING DATE: AUGUST 1, 2013

SUBJECT: RESOLUTION TO ADOPT A DEVELOPMENT REIMBURSEMENT AND LIEN AGREEMENT WITH RIGGS 57 LLC, AN ARIZONA LIMITED LIABILITY CORPORATION, FOR THE RIGGS ROAD IMPROVEMENT PROJECT, CIP NO. ST100.

-STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it expands and improves the transportation system to meet the needs of Gilbert's citizens.

LEGAL REVIEW

☒ Complete

☐ N/A

FINANCIAL REVIEW

☒ Complete

☐ N/A

RECOMMENDED MOTION

A MOTION TO ADOPT A RESOLUTION APPROVING A DEVELOPMENT REIMBURSEMENT AND LIEN AGREEMENT WITH RIGGS 57 LLC, AN ARIZONA LIMITED LIABILITY CORPORATION, FOR THE RIGGS ROAD IMPROVEMENT PROJECT, CIP NO. ST100, AND AUTHORIZE THE MAYOR TO EXECUTE THE REQUIRED DOCUMENTS.

BACKGROUND/DISCUSSION

This Town's ST100 CIP project included the design and construction of Riggs Road between Recker and Val Vista Roads. Riggs 57 LLC owns a 60-acre (+/-) property adjacent to Riggs Road in this area. Pursuant to Ordinance 2431, the property owner is required to reimburse the Town for the design and construction of off-site improvements to Riggs Road adjacent to their property. In accordance with

Ordinance 2431, the developer is required to enter into a Development Reimbursement and Lien Agreement with the Town. This agreement requires repayment of the associated capital costs expended by the Town for the adjacent Riggs Road improvements.

The attached agreement requires the full reimbursement to be made prior to the first Certificate of Occupancy or the final approval of any unit or building constructed on the property. The total reimbursement amount required by this Development Reimbursement and Lien Agreement is \$727,290.45.

FINANCIAL IMPACT

The project was completed and constructed in accordance with the Town's adopted CIP program, as project number ST100. The total cost for the improvements on Riggs Road related to the subject property is \$727,290.45. When paid, these funds will be a reimbursement to the Town for money spent to construct the project. While the exact timing of the reimbursement is dependent on the economy, we anticipate reimbursement within 12-18 months.

The financial impact was reviewed by Cris Parisot in the Office of Management and Budget.

STAFF RECOMMENDATION

The Engineering Division has reviewed the agreement with Town Attorney Phyllis Smiley and recommends approval.

Respectfully submitted,



Tom Condit, P.E.
Development Engineer
tom.condit@gilbertaz.gov

Attachment: Authorizing Resolution
 Development Reimbursement and Lien Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, APPROVING A DEVELOPMENT REIMBURSEMENT AND LIEN AGREEMENT WITH RIGGS 57 LLC, AN ARIZONA LIMITED LIABILITY CORPORATION, RELATED TO THE DEVELOPMENT OF CERTAIN PROPERTY LOCATED IN THE TOWN; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.

WHEREAS, A.R.S. § 9-500.05 authorizes the Town of Gilbert to enter into development agreements related to the development of property in the Town; and

WHEREAS, all the property subject to the Development Reimbursement and Lien Agreement attached as Exhibit 1 is located within the Town of Gilbert; and

WHEREAS, the Town and Riggs 57 LLC desire to enter into a Development Reimbursement and Lien Agreement for the reimbursement by Developer to the Town of the cost of construction of certain roadway improvements otherwise required to be constructed by developer; and

WHEREAS, the Town Council of the Town of Gilbert finds that entering into this Development Reimbursement and Lien Agreement is in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, that the Development Reimbursement and Lien Agreement between the Town and Riggs 57 LLC, attached hereto as Exhibit 1, be and is hereby approved and the Mayor is authorized and directed to execute said Development Reimbursement and Lien Agreement; and

FURTHER RESOLVED, that the Town Clerk be and she is hereby authorized and directed to record a copy of the Development Reimbursement and Lien Agreement with the Maricopa County Recorder within ten days after the date of its execution by the parties in accordance with the terms of the Agreement.

FURTHER RESOLVED, that all resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS _____ DAY OF _____, 2013

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this ____ day of _____, 2013

John W. Lewis, Mayor

ATTEST:

Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.
Town Attorneys
By: Susan D. Goodwin

The following exhibits are attached hereto and incorporated herein:

1. Development Reimbursement and Lien Agreement

EXHIBIT 1

DEVELOPMENT REIMBURSEMENT AND LIEN AGREEMENT

When Recorded Return to:

Catherine A. Templeton, Town Clerk
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

DEVELOPMENT REIMBURSEMENT AND LIEN AGREEMENT

THIS AGREEMENT is between the Town of Gilbert, Arizona, ("Gilbert") and Riggs 57 LLC, an Arizona Limited Liability Corporation, ("Owner"), the legal owner of record for the real property identified herein or identified in the attached exhibit and its successors or assigns located at the northwest corner of Riggs Road and Adora Boulevard in Gilbert, Arizona, identified as Maricopa County Assessor Parcel No. 304-79-001K, and more particularly described in Exhibit A ("Property").

Recitals:

1. Owner, and its assigns and successors, intend to develop the Property. Owner acknowledges that pursuant to Ordinance No. 2431, which rezoned the Property, Owner is required to reimburse Gilbert for design and construction of the Town's Riggs Road widening and associated ST100 Capital Improvements Project ("Improvements").
2. Owner does not yet have an approved final plat setting forth the exact location of the drainage and retention easements, nor has it been determined when development of the Property will occur.
3. Owner acknowledges that the design and construction of the Improvements was completed prior to Owner's intended development of the Property.
4. The parties agree it is in the best interests of Owner and Gilbert for Gilbert to design and construct the Improvements prior to development of the Property by Owner.

NOW THEREFORE in consideration of the mutual promises and agreements made herein, the Parties agree as follows:

1. **Reimbursement of Cost of Improvements:** The proportionate share of the cost of the Improvements to be reimbursed by Owner shall be \$727,290.45. Failure to pay such cost prior to issuance of a certificate of occupancy or final approval of any unit or building constructed on the Property shall result in Gilbert placing a lien upon the Property, withholding permits, or withholding municipal services to the Property until the funds are fully received.
 - 1.1 **Determination of Cost.** This dollar amount is based on actual construction costs specific to the roadway frontage adjacent to the Property.
2. Unless Gilbert agrees in writing to extend the payment deadline for the Owner's reimbursement to Gilbert for the cost of the Improvements, the failure of Owner to pay in accordance with the foregoing deadlines will constitute a material breach of this Agreement,

for which Gilbert shall be entitled to exercise the remedy of a judicial foreclosure pursuant to Title 33, Chapter 6 of the Arizona Revised Statutes. Gilbert may elect to forego the judicial foreclosure of the Lien created by this agreement and may, through a judicial proceeding, pursue other legal and equitable remedies available to it for any defaults and breaches.

3. It is expressly agreed and acknowledged between Gilbert and Owner and its successors or assigns that after the payment in full of the cost of the Improvements by Owner to Gilbert, Gilbert will immediately record a Full Satisfaction and Full Release of this Development Reimbursement and Lien Agreement that will be recorded against the Remaining Property.

4. Time is of the essence for the performance of this Agreement and the amounts described herein shall be a lien upon all of the Remaining Property and shall bind the successors in interest thereto and shall run with the land as to all real property identified by the exhibit attached hereto. Owners and their assigns or successors agree to execute any and all documents necessary to perfect the lien upon the Property.

5. Should collection proceedings or litigation be necessary in order to enforce this Agreement, the prevailing party shall be awarded its reasonable attorneys fees and costs and collection costs incurred.

6. It is the intention of the parties that this Agreement be recorded to provide notice to all purchasers of the real property identified herein or identified hereafter in the attached exhibit of the obligations set forth herein that pertain to such real property. This Agreement shall be binding upon the successors and assigns of Owner.

7. All notices, approvals and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, if in writing, and delivered personally, sent by postage prepaid United States Mail, or sent by nationally recognized overnight courier (e.g., Federal Express, Airborne, UPS), and addressed to the recipient as follows:

Gilbert: Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296
Attention: Town Manager

Owner: Riggs 57 LLC
2390 E. Camelback Road, Suite 320
Phoenix, AZ 85016
Attention: Brian Burch

or to such other addresses as a party may from time to time designate in writing and deliver in a like manner. Notices, approvals and other communications provided for herein shall be deemed delivered upon personal delivery or 24 hours following deposit with a nationally recognized overnight courier, as herein above provided, prepaid and addressed as set forth above.

8. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

DATED the date and year first above written.

TOWN OF GILBERT

OWNER

By:
Mayor

RIGGS 57 LLC
Brian Burch
By: BRIAN BURCH
MANAGER

ATTEST:

Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.
Town Attorneys
By:

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

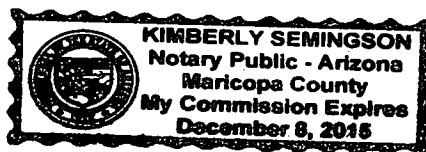
On this 15th day of July, 2013, before me, the undersigned Notary Public, personally appeared Brian Burch, who acknowledged himself/herself to be Manager, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Kimberly Semington
Notary Public

My Commission Expires:

December 8, 2015



ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ___ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be _____, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT A
Description of Property

THAT PORTION OF A PARCEL OF LAND LYING WITHIN THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, SAID PORTION BEING A PART OF THAT CERTAIN PARCEL AS DESCRIBED IN DOCUMENT 1988-085571, MARICOPA COUNTY RECORDER, MARICOPA COUNTY, ARIZONA, SAID PORTION IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 27, FROM WHICH SAID POINT BEARS SOUTH 89 DEGREES 33 MINUTES 17 SECONDS EAST, A DISTANCE OF 2693.25 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 27;

THENCE ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, NORTH 89 DEGREES 33 MINUTES 17 SECONDS WEST, TO A POINT ON THE EAST LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 27, A DISTANCE OF 1346.62 FEET TO THE POINT OF BEGINNING;

THENCE LEAVING SAID SOUTH LINE AND ALONG THE EAST LINE OF SAID WEST HALF, NORTH 00 DEGREES 03 MINUTES 05 SECONDS EAST, TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 27, A DISTANCE OF 2640.86 FEET, SAID POINT BEARS NORTH 89 DEGREES 46 MINUTES 27 SECONDS WEST, A DISTANCE OF 1345.36 FEET FROM THE CENTER OF SAID SECTION 27;

THENCE ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER, NORTH 89 DEGREES 46 MINUTES 27 SECONDS WEST, A DISTANCE OF 862.94 FEET;

THENCE LEAVING THE NORTH LINE OF SAID SOUTHWEST QUARTER, SOUTH 00 DEGREES 07 MINUTES 20 SECONDS WEST, A DISTANCE OF 942.32 FEET;

THENCE 923.11 FEET ALONG A TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 32 DEGREES 35 MINUTES 23 SECONDS, WITH A RADIUS OF 1622.92 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 43 SECONDS WEST, TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 27, A DISTANCE OF 819.57 FEET;

THENCE ALONG SAID SOUTH LINE, SOUTH 89 DEGREES 33 MINUTES 17 SECONDS EAST, TO A POINT ON THE EAST LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 27, A DISTANCE OF 1120.88 FEET TO THE POINT OF BEGINNING;

EXCEPT THE SOUTH 70 FEET THEREOF.
